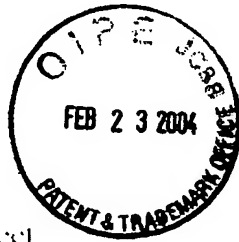


DACE
#16

Paper No. 5

Bernard Vining
6419 South Troy Street
Chicago, IL 60629

RECEIVED

FEB 23 2004

OFFICE OF PETITIONS

In re Application of
Vining

Application No. 10 080,260

Filed: February 21, 2002

For: SMOKE DETECTOR WITH RE-RESET
SWITCH

ON PETITION

This is a decision on the petition filed December 29, 2003, which is being treated as a petition under 37 CFR 1.181 (no fee) to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition To Withdraw the Holding of Abandonment." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed March 19, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on May 19, 2002. A Notice of Abandonment was mailed on December 3, 2003.

Petitioner contends that the Notice of Missing Parts was never received.

In the absence of any irregularity in the mailing of the Office action, there is a strong presumption that the Office action was properly mailed and received. In order to overcome this presumption, a petition alleging non-receipt of an Office action must

- (1) include a statement that the Office action was not received;
 - (2) attest that a search of the file folder, or location where the paper would have been placed, has been made; and
 - (3) include any additional information which may be required by the Commissioner.
- See MPEP 711.03(c)(1).

Petitioner should discuss how was processed when received during March of 2002. Did petitioner directly handle all mail? Has all mail related to the instant application been kept in one location? If yes, has a search of that location been made? Petitioner should fully discuss the handling of all mail to show that it is more likely than not the mail was lost prior to receipt rather than not received by petitioner.